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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/804,618

03/12/2001

Dale C. Flanders

1084-US

3159

25263

7590

09/20/2002

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EXAMINER

NGUYEN, JOSEPH H

ART UNIT

PAPER NUMBER

2815

DATE MAILED: 09/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/804,618

Applicant(s)

FLANDERS ET AL.

Examiner

Joseph Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 13-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election of claims 1-12 in Paper No. 6 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Therefore, claims 1-12 are hereby prosecuted whereas claims 13-22 are withdrawn from consideration.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites the limitation "the optical coating" in line 1. There is insufficient antecedent basis for this limitation in the claim. There is no such optical coating previously recited in claim 1 from which claim 12 depends.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application

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published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or  
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Miller et al.

Regarding claim 1, Miller et al discloses on figures 1 an optical membrane device comprising a support 100; a device layer 125 in which a deflectable membrane structure is formed; a sacrificial layer 110 separating the support from the device layer that is selectively removed to release the membrane structure; and an optically curved surface 127 on the deflectable membrane.

Regarding claim 2, Miller et al discloses on figures 1 the optical surface 127 is formed in an optical element layer that is deposited on the device layer.

Regarding claim 3, Miller et al discloses on figures 1 the optical surface is etched into the device layer.

Regarding claim 4, Miller et al discloses on figures 1 the optical surface is a concave surface 120 that is etched into the device layer.

Regarding claim 5, Miller et al discloses on figures 1 the optical surface is a convex surface 127 that is etched into the device layer.

Regarding claim 6, Miller et al discloses on figures 1 the sacrificial layer 110 defines an electrical cavity across which electrical fields are established to deflect the membrane structure in a direction of the support.

Regarding claim 7, Miller et al discloses on figures 1 the membrane structure comprises a center body portion 156; an outer portion 152, which is at least partially

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supported by the sacrificial layer 110 and tethers 158 that extend between the center body and the outer portion 152.

Regarding claim 8, Miller et al discloses on figures 1 the sacrificial layer 110 defines an electrical cavity across which electrical fields are established to deflect the membrane structure in a direction of the support.

Regarding claim 9, Miller et al discloses on figures 1 the membrane structure comprises a center body portion 156; an outer portion 152, which is at least partially supported by the sacrificial layer 110; and tethers 158 that extend between the center body portion and the outer portion 152.

Regarding claim 10, Miller et al discloses on figures 1 comprising an optical coating 140 deposited over the optical surface.

Regarding claim 11, Miller et al discloses on figures 1 the optical coating is multi dielectric mirror (col. 3, lines 25-26).

Regarding claim 12, Miller et al discloses on figures 1 the optical is antireflection coating 105.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent 5291502 to Pezeshki et al discloses a micro laser.

US Patent 5245622 to Jewell et al discloses a vertical cavity surface emitting lasers.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Nguyen whose telephone number is (703) 308-1269. The examiner can normally be reached on Monday-Friday, 7:30 am- 4:30 pm

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eddie Lee can be reached on (703) 308-1690. The fax phone numbers for the organization where this application or proceeding is assigned is (703) 308-7382 for regular communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

JN  
February 15, 2002



EDDIE LEE  
SUPERVISORY PATENT EXAMINER  
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